No. 80-982

IN THE

# Supreme Court of the United States

October Term, 1980

WILLIAM S. KARN,

*Petitioner,*

*v.*

THE MAGNAVOX COMPANY and
NORTH AMERICAN PHILIPS CORP.,

*Respondents.*

On Petition for a Writ of Certiorari to the Supreme Court of Delaware.

## BRIEF FOR THE RESPONDENTS IN OPPOSITION

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## BRIEF FOR THE RESPONDENTS IN OPPOSITION.

### REASONS FOR DENYING THE WRIT.

This petition seeks review of an Order of the Supreme Court of Delaware (A 1-2) which dismissed an appeal for failure of the appellant to have compiled with the applicable statutes and court rules of Delaware in perfecting said appeal. The petition thus presents no constitutional or federal statutory questions nor does the case involve any of the other reasons for allowing a writ as set forth in Supreme Court Rule 17. The petition should be denied.

Moreover, the underlying claim is patently without merit. In July, 1975, The Magnavox Company, a Delaware corporation, merged under applicable Delaware statutes with a wholly-owned subsidiary of North American Philips Development Company, also a Delaware

corporation, its 85% stockholder. A class action challenging the merger on behalf of Magnavox minority stockholders was filed in the Court of Chancery for New Castle County, Delaware, *Singer v. The Magnavox Company, et al.,* Civil Action No. 4929. The complaint alleged breaches of common law fiduciary duties and state statutes. After the Supreme Court of Delaware ruled that a valid claim for breach of fiduciary duty was alleged under state law (*Singer v. The Magnavox Company,* 380 A. 2d 969, (Del. Supr. 1977)), plaintiffs engaged in extensive discovery, leading ultimately to negotiations which resulted in a proposed settlement. A class consisting of all Magnavox minority stockholders at the time of the merger was certified as the plaintiff class, and a Notice of Pendency of Class Action and Proposed Settlement and Hearing Thereon (B 1-4) was mailed to all prospective class members, including petitioner Karn.

Pursuant to Chancery Court Rule 23, which is in substance identical to Rule 23 of the Federal Rules of Civil Procedure, each prospective class member, including Karn, was granted the opportunity to exclude himself from the prospective class in order to pursue any individual remedy which might be available. Karn did not so elect. Instead he moved to intervene and filed a motion to dismiss the entire action for lack of jurisdiction. At the hearing on the settlement, Karn was given full opportunity to present arguments. Vice Chancellor Grover C. Brown stated that, while he doubted Karn's standing as intervenor to file such a motion, he rejected it on its merits as well. The settlement was subsequently approved and distribution of the cash proceeds of the settlement to class members undertaken.

Karn subsequently attempted to appeal from the Vice Chancellor's ruling, but, as reflected in the Order as to

which certiorari is sought, he failed to meet basic procedural requirements.*

In *Green v. Santa Fe Industries, Inc.*, 430 U. S. 462 (1977), this Court expressly recognized that corporate activity of the type here challenged has been traditionally left to state regulation and that the role of the federal judiciary in corporate governance is limited. See also *Cort v. Ash*, 422 U. S. 66, 84 (1975). This case represents a casebook application of these principles, and petitioner's efforts to create federal anti-trust and other issues out of this settlement presents an essentially frivolous challenge to well-established law.

The petition should be denied.

Respectfully submitted,

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December 29, 1980

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* Among Karn's other deficiencies was his failure to give notice of his appeal to the class action plaintiffs, who are, in fact, the parties who would be adversely affected by the granting of relief to Karn. This failure has apparently recurred in this Court.

## APPENDIX.

### Extracts From Notice of Pendency of Class Action and Proposed Settlement and Hearing Thereon.

*To: All persons who were Stockholders of record of The Magnavox Company on July 24, 1975, immediately preceding its merger with a subsidiary of North American Philips Development Corporation ("NAPDC"), excluding NAPDC and those persons subject to an appraisal action now pending in this court with respect to said merger.*

### CLASS DETERMINATION

1. (a) Notice is hereby given pursuant to an Order of the Honorable Grover C. Brown, Vice Chancellor of the State of Delaware, entered May 29, 1980, to all persons who were stockholders of record of The Magnavox Company ("Magnavox" or "the Company") on July 24, 1975, immediately preceding its merger with a wholly owned subsidiary of North American Philips Development Corporation ("NAPDC") as hereinafter described (see paragraph 2 below) ("the Merger") that the above-entitled action has been determined to be a class action, on behalf of a class consisting of all those persons who were stockholders of the Company on July 24, 1975, immediately preceding the Merger, excluding NAPDC and those persons subject to the appraisal action now pending with respect to the Merger. If you are such a person, you are a member of the Class and your rights in connection with the subject matter of this action will be determined by this action, unless you notify the Court in writing before July 21, 1980 that you elect not to remain in the Class (see paragraph 4 below).

## DESCRIPTION AND HISTORY OF THE LITIGATION

2. This action ("the Chancery action") was commenced by Louis and Mollie Singer, Plaintiffs, on November 11, 1975 on behalf of all persons other than NAPDC who had been stockholders of the Company immediately prior to the Merger. The gravamen of the Complaint was that North American Philips Corporation ("NAPC") and NAPDC, as the controlling stockholders of the Company, and the Magnavox board of directors had, in effectuating the Merger, violated the common law fiduciary duty owed by them to the minority stockholders of Magnavox; and the provisions of the Delaware "Blue Sky" law (6 DEL. C. CH. 73) in connection with the notice of stockholders' meeting convened to consider the Merger. Named as defendants were Magnavox, NAPC, NAPDC and those individuals who had been directors of Magnavox at the time of the merger. The relief sought in said action was rescission of the merger or, alternatively, the payment of damages to the members of the Class, or other appropriate relief.

* * *

On October 29, 1976 the Chancery action was dismissed by order of Vice Chancellor Grover C. Brown for failure to state claims upon which relief could be granted. Upon appeal, however, said order was by opinion dated September 23, 1977 in part reversed by the Delaware Supreme Court, and the complaint reinstated insofar as it alleged that defendants had violated their fiduciary duty in effecting a merger for no purpose other than to eliminate the Magnavox minority stockholders. The dismissal of the allegations of violation of the Delaware "Blue Sky" law was affirmed. Upon remand plaintiffs filed, on Octo-

ber 25, 1977, an amended complaint alleging, in addition to the aforementioned breaches of fiduciary duty in the effectuation of the merger, a claim that defendants had breached their fiduciary duty of "complete candor" in the disclosures to the Magnavox minority stockholders in connection with the shareholders meeting convened to consider the merger. An answer denying all of the material allegations of the amended complaint was filed November 30, 1977.

By Opinion dated December 14, 1978, Vice Chancellor Grover C. Brown granted plaintiffs' motion for class action certification pursuant to Chancery Court Rule 23(b)(3), designating as the appropriate beneficiary class all persons who had been stockholders of Magnavox other than NAPDC, on July 24, 1975 immediately prior to the merger. Defendants on December 21, 1978 filed a motion for reargument insofar as said opinion designated as members of the beneficiary class those minority stockholders of Magnavox who had voted in favor of the merger or who had acquired Magnavox stock subsequent to the April 30, 1975 announcement of the merger. Said motion for reargument was pending before the Court when the proposed settlement was reached.

° ° °

## PROPOSED SETTLEMENT AND HEARING

3. Counsel to the parties have entered into a Stipulation of Settlement, dated May 22, 1980 ("the Stipulation"). A hearing will be held on July 31, 1980 before the Honorable Grover C. Brown, Vice Chancellor, in the Court of Chancery, Public Building, 11th and King Streets, Wilmington, Delaware 19801 at 11 A.M. to determine whether the proposed settlement of this action should

be approved as fair, reasonable and adequate and in the best interests of the members of the Class (see paragraph 5 below) and, in the event the Court approves the Stipulation, to pass upon plaintiff's attorneys' application for allowance of fees and expenses . . . .

## INSTRUCTIONS TO CLASS MEMBERS

4. If you exclude yourself from the Class, you will not share in or be subject to the proposed settlement or to any judgment in this action. You may request to be excluded from the Class by mailing a signed request for exclusion from the Class, stating your name and residence address, the number of shares of the Company you owned on July 24, 1975, immediately preceding the Merger, and the name and address (if different from your own) in which your securities were held of record, postmarked no later than July 21, 1980 to:

David A. Drexler, Esquire
Morris, Nichols, Arsht & Tunnell
P. O. Box 1347
Wilmington, DE 19899

° ° °

5. The following is a brief summary of the terms of the proposed settlement; for its complete terms and provisions please refer to the Stipulation on file with the other documents in this case:

### A. Settlement Amount and Allocation

As consideration for the settlement defendant NAPDC on behalf of itself and on behalf of all defendants shall

pay a total of Nine Hundred Sixty Thousand Dollars ($960,000.00) (being an amount equal to approximately $.34 per share for each share held by members of the beneficiary class), less $.34 for every share of Magnavox stock owned by class members who request exclusion from the class in accordance with procedures set forth at paragraph 4 hereof (the "Settlement Fund"). If requests for exclusion aggregate more than 25% of the total class shares, defendants may elect to terminate the settlement and the litigation will proceed towards trial.

* * *

## PROCEDURE FOR SERVING AND FILING OBJECTIONS, IF ANY

10. At the Hearing, any member of Class who desires to do so may appear personally or by counsel, providing an appearance is filed and served as hereinafter provided, and show cause, if any he has, why the Stipulation should not be approved as fair, reasonable and adequate and a judgment entered dismissing on the merits and with prejudice the claims asserted by the plaintiff and the Class against all defendants and, further, granting an allowance of fees and expenses to Class counsel for their services herein and expenses incurred, provided, however, no member of the Class or any person shall be heard or entitled to contest the approval of the terms and conditions of this settlement, and if approved, the judgment entered thereon, and the allowance of fees and expenses to the Class counsel, and no papers or briefs submitted by any member of the Class or any person shall be received and considered except by Order of the Court for good cause shown, unless, on or before July 21, 1980 said person

has served written objections and copies of any other papers and briefs upon

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Attorney for defendants

and

James L. Holzman, Esquire
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P. O. Box 1328
Wilmington, DE 19899
Class counsel

and filed the objections, papers and briefs with the Register in Chancery, Public Building, 11th and King Streets, Wilmington, Delaware, 19801.

* * *

Dated: June 18, 1980

/s/ JOHN D. KELLY, III
John D. Kelly, III
Register in Chancery